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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,226	06/30/2003	Robert B. Lawson		7553

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EXAMINER

A, PHI DIEU TRAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,226

Applicant(s)

LAWSON, ROBERT B.

Examiner

Phi D A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

1. Applicant's election with traverse of claims 9-13 to the method of assembling a grating in the reply filed on 6/1/2004 is acknowledged. The traversal is on the ground(s) that the reason for holding the inventions being distinct from each other is not proper and that the reason should have been to the method claims capable of making a different product. This is not found persuasive because the reason set forth "step limitations patentably distinct of the article claims" incorporates the capability of making a different product in addition to the patentably distinct steps being set forth.

The requirement is still deemed proper and is therefore made FINAL.

Applicant's argument with respect to the specie requirement in the article claim is persuasive. The specie restriction to the article claims is hereby withdrawn.

With respect to applicant's statement that applicant has tried numerous times to contact the examiner by telephone and there was no answer, examiner respectfully asks applicant to double check the telephone number applicant has called. Examiner has neither received any voice message nor directly talked with applicant besides the one time examiner himself contacts applicant per restriction as of record. It has always been the Patent Office's policy to return calls within one business day. Examiner has always upheld the Office policy.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 9, 11-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9, line 2 "an edge including straight edges and curvatures" is indefinite. It is unclear how an edge can have edges and curvatures.

Claim 11 line 2 "gutter an" is improper. Should it be "gutter and"?

Claim 12 "including any of said curvatures" is indefinite. The language is confusing in scope.

Claim 13 lines 1-4 are indefinite. The step of drilling should be the last action/step. The claimed language does not set forth the correct sequence of actions.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract is longer than 150 words.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arens (3864887) in view of Kawachi et al and McEldowney.

Arens shows a grating assembly being installed on a gutter of a swimming pool, the assembly having a plurality of grate bars parallel to each other and parallel to the pool edge of the gutter in an elevated position, the gratings being installed flush with the deck of the swimming pool.

Arens does not show the bars being assembled by clamping the grate bars into a unit and thereafter drilling a hole therethrough all of the clamped grate bars, passing a rod through all of the drilled holes and fixing the ends of the rods to prevent a movement of the rods in any direction.

Kawachi et al shows a grating assembly comprising a plurality of grating bars (1U) being connected by rods (3) passing through holes in the parallel bars to hold the bars together.

McEldowney discloses a drill guide clamping multiple parts to be drilled together to form aligned holes when finished.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Arens to show the bars being assembled by clamping the grate bars into a unit and thereafter drilling a hole therethrough all of the clamped grate bars, passing a rod through all of the drilled holes and fixing the ends of the rods to prevent a movement of the rods in any direction because having multiple parts clamped together to drill hole would allow for

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precision alignment of the parts when done as taught by McEldowney, and having a rod passing through the holes would enable the securing of the bars together as taught by Kawachi et al.

Arens as modified shows all the claimed limitations. The claimed method steps would have been the obvious methods of assembling Arens' modified structure.

Per claim 12, Arens as modified Kawachi et al and McEldowney above shows a plurality of rods in multiple locations along the assembled grate bars including any of said curvatures.

Per claim 13, Arens as modified Kawachi et al and McEldowney shows clamping bars (50, 22, from McEldowney) on top and below the grate bars prior to the step of drilling; clamping the clamping bars together providing a drilling pilot hole (52, 24) through the clamping to assure an exact drilling through the assembled grate bars.

Per claims 12-13, Arens as modified shows all the claimed limitations. The claimed method steps would have been the obvious methods of assembling Arens' modified structure

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arens in view of McEldowney and Kawachi et al et al as applied to claim 9 above, and further in view of Wright et al (5291714).

Arens as modified shows all the claimed structures except for the bars being bent to correspond to curvatures of the gutter prior to the step of drilling the holes through the grate bars.

Wright et al discloses grate bars being bent to correspond to curvatures of a structure.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Arens' modified structure to show the grate bars being bent to correspond to curvatures of the gutter because it would enable the grate bars to fit within the perimeter of a curving structure as taught by Wright et al.

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Arens as modified shows all the claimed limitations. The claimed method steps would have been the obvious methods of assembling Arens' modified structure.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arens in view of McEldowney and Kawachi et al et al as applied to claim 9 above, and further in view of Wiechowski et al (4244768).

Arens as modified shows all the claimed structures except for the step of assembling the grate bars in an elevated position including the step of placing a support block in the gutter and placing an adjustment jig on a top surface of the block, the bars being received in the jig.

Wiechowski et al shows the step of assembling grate bars by placing a support block (32) underneath the assembly, and placing an adjustment jig (34) on a top surface of the block, the bars being received in the jig.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Arens' modified structure to show the step of assembling the grate bars in an elevated position including the step of placing a support block in the gutter and placing an adjustment jig on a top surface of the block, the bars being received in the jig because having a supporting block underneath the assembly and an adjustment jig would enable the easy, precise aligned assembly of grating bars as taught by Wiechowski et al.

Arens as modified shows all the claimed limitations. The claimed method steps would have been the obvious methods of assembling Arens' modified structure.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different methods of assembling a grating assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

8/20/04